

FILED  
LODGED

ENTERED  
RECEIVED

FEB 26 2007 LK

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
DEPUTY



07-CV-05091-CMP

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

ALYCIA CARMICHAEL-MILAN,

Plaintiff,

v.

GWEN K. SAILER, in her personal and official  
capacities,  
DAVID B. BOROFKY, in his personal  
and official capacities, and  
JOHN PEARSON, in his personal and official  
capacities,

Defendants.

C 07-5091 RBL

COMPLAINT

JURY DEMAND

I. INTRODUCTION

1. Plaintiff Alycia Carmichael-Milan brings this civil action under 42 U.S.C. § 1983 against three administrators of Bates Technical College to redress her suspension from the College's Practical Nursing Program. Defendants suspended Ms. Carmichael-Milan in violation of her First Amendment rights to freedom of speech and to petition for redress of grievances and her Fourteenth Amendment right to due process of law.

COMPLAINT - 1

FRANK FREED  
SUBIT & THOMAS LLP  
SUITE 1200 HOLT BUILDING, 705 SECOND AVENUE  
SEATTLE, WASHINGTON 98104-1798  
(206) 682-6711

1 II. PARTIES

2 2.1 Plaintiff Alycia Carmichael-Milan is a former nursing student at Bates  
3 Technical College in Tacoma, Washington. Ms. Carmichael-Milan is a citizen of  
4 Washington.  
5

6 2.2 Defendant David B. Borofsky is President of Bates Technical College.  
7 Defendant Borofsky is sued in both his individual and official capacities.

8 2.3 Defendant Gwen K. Sailer is Vice-President of Student Services of Bates  
9 Technical College. Defendant Sailer is sued in both her individual and official capacities.

10 2.4 Defendant John Pearson was Chair of the Bates Technical College  
11 Student/Faculty Disciplinary Committee in May 2006. Defendant Pearson is sued in both  
12 his individual and official capacities.  
13

14 III. JURISDICTION AND VENUE

15 3.1 This court has jurisdiction over Plaintiff's claims pursuant to 28 U.S.C. §§  
16 1331 and 1343(3).

17 3.2 Venue properly rests with this court pursuant to 28 U.S.C. § 1391(b)(2).  
18

19 IV. FACTS

20 4.1 In the Fall of 2005, Ms. Carmichael-Milan enrolled as a student in the Bates  
21 Technical College Practical Nursing Program.

22 4.2 In February 2006, Ms. Carmichael-Milan filed a student grievance against  
23 a nursing instructor in accordance with the Bates Technical College student grievance  
24 procedure. Ms. Carmichael-Milan alleged the nursing instructor had without permission  
25  
26  
27

1 grabbed the jacket she was wearing and yanked on it, injuring Ms. Carmichael-Milan's  
2 shoulder in the process.

3 4.3 Ms. Carmichael Milan wrote in her student grievance that "it is my desire  
4 to complete this nursing program and this letter is to advise the administration of Bates  
5 Technical College that further physical assault/battery, humiliation, name calling,  
6 demeaning remarks, unfair grading, mental and emotional abuse will no longer be tolerated  
7 without recourse. These acts are in direct violation of Washington State Law. . . ."

8 4.4 By letter dated March 23, 2006, defendant Sailer denied Ms. Carmichael's  
9 February 2006 student grievance.

10 4.5 By separate letter dated March 23, 2006, defendant Sailer suspended Ms.  
11 Carmichael-Milan from the Practical Nursing Program. Defendant Sailer described Ms.  
12 Carmichael-Milan's February 2006 student grievance as "intimidating" and stated the  
13 grievance showed Ms. Carmichael-Milan "might present an imminent danger to property,  
14 students, or person in college facilities."

15 4.6 Ms. Carmichael-Milan timely appealed her suspension to the Bates  
16 Technical College Student/Faculty Disciplinary Committee, which was at that time chaired  
17 by Defendant Pearson, the designee of Defendant Borofsky.

18 4.7 The Student/Faculty Disciplinary Committee heard Ms. Carmichael-Milan's  
19 appeal on May 9, 2006. That hearing failed to accord Ms. Carmichael-Milan due process  
20 of law.

1           4.8     On or about May 11, 2006, the Student/Faculty Disciplinary Committee  
2 upheld Ms. Carmichael-Milan's suspension from the Practical Nursing Program because  
3 of the contents of her February 2006 student grievance.

4           4.9     Ms. Carmichael-Milan timely appealed her suspension to the College  
5 President, Defendant Borofsky.

6           4.10    On June 27, 2006, Defendant Borofsky issued a written decision concurring  
7 with the findings of the Student/Faculty Disciplinary Committee and upholding Ms.  
8 Carmichael-Milan's suspension.  
9

10                               V. FIRST CAUSE OF ACTION  
11                               VIOLATION OF THE FIRST AMENDMENT

12           5.1     Plaintiff realleges paragraphs 1.1 through 4.10 as if fully set forth herein.

13           5.2     Defendants were at all times acting under color of the laws of the state of  
14 Washington.

15           5.3     Plaintiff's February 2006 student grievance was protected by the First  
16 Amendment to the United States Constitution.  
17

18           5.4     Defendants suspended plaintiff from the Practical Nursing Program because  
19 of her February 2006 student grievance.

20           5.5     Defendants' actions taken under color of state law deprived plaintiff of  
21 her constitutional rights to freedom of speech and to petition for redress of grievances  
22 guaranteed by the First Amendment to the United States Constitution through the  
23 Fourteenth Amendment. Defendants' actions have also deprived plaintiff of rights,  
24 privileges and immunities in violation of 42 U.S.C. §1983.  
25  
26  
27

1           5.6     The actions of defendants, described above, manifested a willful, malicious,  
2 reckless and callous indifference to plaintiff's rights.

3           5.7     The actions of defendants, described above, violated plaintiff's clearly  
4 established constitutional rights of which a reasonable official would have known.  
5

6           5.8     As a direct and proximate cause of defendants' violation of plaintiff's  
7 rights, she has suffered and continues to suffer economic damages, including lost past and  
8 future wages and employment benefits, all in amounts to be proven at trial.

9                               VI. SECOND CAUSE OF ACTION  
10          DENIAL OF DUE PROCESS IN VIOLATION OF THE 14<sup>th</sup> AMENDMENT

11          6.1     Plaintiff realleges paragraphs 1.1 through 4.10 as if fully set forth herein.

12          6.2     The Fourteenth Amendment to the United States Constitution protects  
13 *an individual from deprivations of liberty or property without due process of law.*

14          6.3     Plaintiff had liberty and property interests in continuing to attend Bates  
15 Technical College as a nursing student and to pursue her chosen career as a nurse.  
16

17          6.4     Defendants deprived plaintiff of liberty and property without due process  
18 of law. Defendants' actions have also deprived plaintiff of rights, privileges and  
19 immunities in violation of 42 U.S.C. §1983.

20          6.5     The actions of defendants, described above, manifested a willful, malicious,  
21 reckless and callous indifference to plaintiff's rights.  
22

23          6.6     The actions of defendants, described above, violated plaintiff's clearly  
24 established constitutional rights of which a reasonable official would have known.  
25  
26  
27

6.7 As a direct and proximate cause of defendants' violation of plaintiff's rights, she has suffered and continues to suffer economic damages, including lost past and future wages and employment benefits, all in amounts to be proven at trial.

VII. PRAYER FOR RELIEF

Plaintiff requests this court grant the following relief to correct defendants' unlawful actions:

1. Lost wages, including front and back pay, and lost future employment benefits;
2. Punitive damages in an amount to be determined at trial;
3. A declaratory judgment that defendants violated plaintiff's constitutional rights;
4. Reasonable attorneys' fees, expert witness fees, and costs and expenses pursuant to 42 U.S.C. § 1988;
5. Pre-and post-judgment interest at the maximum rate allowed by law; and
6. Such other and further and different relief as the court deems just and proper.

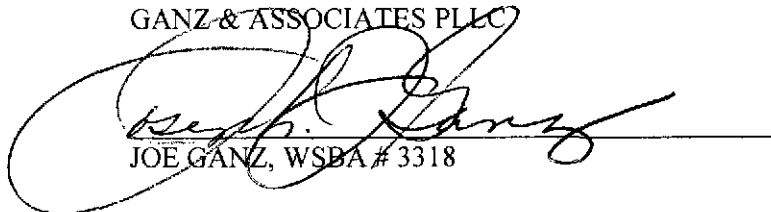
DATED this 20<sup>th</sup> day of February 2007.

FRANK FREED SUBIT & THOMAS LLP



MICHAEL C. SUBIT, WSBA #29189

GANZ & ASSOCIATES PLLC

A large, stylized handwritten signature in black ink, appearing to read 'Joe Ganz', is written over a horizontal line.

JOE GANZ, WSBA # 3318

Attorneys for Plaintiff Alycia Carmichael-Milan

G:\C-D\Carmichael\complaint.wpd

COMPLAINT - 7

FRANK FREED  
SUBIT & THOMAS LLP  
SUITE 1200 HOGG BUILDING, 705 SECOND AVENUE  
SEATTLE, WASHINGTON 98104-1798  
(206) 682-6711